

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**ROBERT MARTIN BARRITT,**

**Petitioner,**

**vs.**

**Civil Action No. 2:08 CV 43  
(Maxwell)**

**DAVID BALLARD, Warden,**

**Respondent.**

**ORDER**

It will be remembered that the above-styled civil action was instituted on February 4, 2008, when *pro se* Petitioner Robert Martin Barritt filed a Petition for Action under 28 U.S.C. § 2243. In the Petition, the Petitioner asserts that his constitutional rights have been violated and seeks an evidentiary hearing on habeas corpus grounds under § 2243 of Title 28.

It will further be remembered that the above-styled civil action was referred to United States Magistrate Judge John S. Kaull for initial review and report and recommendation, pursuant to Rule 83.09 of the Local Rules of Prisoner Litigation Procedure.

By Order entered March 20, 2008, Magistrate Judge Kaull indicated that he had reviewed the Petition and had determined that 28 U.S.C. § 2243 did not state an appropriate jurisdictional basis for the Petitioner's claims. In this regard, Magistrate Judge Kaull indicated that, reading the Petition liberally, he had determined that the Petitioner was challenging a state court conviction and sentence arising out of the Circuit Court of Ohio County, West Virginia. Accordingly, Magistrate Judge Kaull's

March 20, 2008, Order construed the Petitioner's Petition as a challenge to the Petitioner's state court conviction under 28 U.S.C. § 2254.

The Petitioner filed an Objection to Magistrate Judge Kaull's March 20, 2008, Order on March 27, 2008.

By Opinion/Report And Recommendation entered October 31, 2008, Magistrate Judge Kaull recommended that the Petitioner's March 27, 2008, Objection to his March 20, 2008, Order be overruled and that the Petitioner's construed § 2254 Petition be denied and dismissed with prejudice as successive. Magistrate Judge Kaull's Opinion/Report And Recommendation expressly advised the parties, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections to said Opinion/Report And Recommendation within ten days after being served with a copy of the same.

On November 12, 2008, the Petitioner filed his Objection to Magistrate Judge Kaull's October 31, 2008, Opinion/Report And Recommendation.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of Magistrate Judge Kaull's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of Magistrate Judge Kaull as to those portions of the findings or recommendation to which no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4<sup>th</sup> Cir. 1980); United States v. Schronce, 727 F.2d 91, 94 (4<sup>th</sup> Cir. 1984). As previously noted, the Petitioner timely filed his Objection to Magistrate Judge Kaull's October 31, 2008, Opinion/Report And Recommendation on November 12, 2008. Accordingly, this Court has conducted a *de novo* review only as to the portions of the

Opinion/Report And Recommendation to which the Petitioner objected. The remaining portions of the Opinion/Report And Recommendation to which the Petitioner did not object were reviewed for clear error.

Upon examination of Magistrate Judge Kaull's Opinion/Report And Recommendation, it appears to the Court that the issues raised by the Petitioner in his Objection were thoroughly considered by Magistrate Judge Kaull in his Opinion/Report And Recommendation. Moreover, the Court is of the opinion that Magistrate Judge Kaull's Opinion/Report And Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in the above-styled civil action. Therefore, it is

**ORDERED** that the Opinion/Report And Recommendation entered by United States Magistrate Judge John S. Kaull on October 31, 2009, (Docket No. 9), be, and the same hereby is, **ACCEPTED** in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

**ORDERED** That the Petitioner's Objection to Magistrate Judge Kaull's March 20, 2008, Order (Docket No. 8), be, and the same is hereby, **OVERRULED**. It is further

**ORDERED** that the Petitioner's Petition for Action under 28 U.S.C. § 2243, which was construed to be a Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Docket No. 1), be, and the same is hereby, **DENIED** and **DISMISSED** with prejudice as successive.

Having found that both Magistrate Judge Kaull's March 20, 2008, Order and his October 31, 2009, Opinion/Report And Recommendation were entirely appropriate and accurately reflect the law applicable to the facts and circumstances before the Court in this action, it is further

**ORDERED** that the Petitioner's Motion To Disqualify Magistrate Kaull Pursuant

To 28 U.S.C. S2243 (Docket No. 12) be, and the same is hereby, **DENIED**.

In light of the dismissal of the Petitioner's § 2254 Petition as successive, It is further

**ORDERED** that the Petitioner's Motion For Oral Arguments (Docket No. 12) be, and the same is hereby, **DENIED as moot**. It is further

**ORDERED** that, should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court Of Appeals For The Fourth Circuit.

The Clerk of Court is directed to transmit copies of this Order to the **pro se** Petitioner and to any counsel of record.

**ENTER:** September 21, 2009

**/S/ Robert E. Maxwell**  
United States District Judge